




United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM99-2

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director 
Office of Environmental Policy and Compliance

Subject: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act

Attached is a recent Council on Environmental Quality (CEQ) memorandum on the above subject. Please incorporate it in your bureau guidance for compliance with NEPA.

While the memorandum is self explanatory, we wish to emphasize the message contained in the final paragraph that "...cooperating agency status neither enlarges nor diminishes the decisionmaking authority of either federal or non-federal entities." Non-Federal agencies often believe that having this status will give them a privileged position in the development and processing of an environmental compliance document. It is necessary to carefully educate non-Federal agencies in the special meaning of cooperating agency as described in 40 CFR 1501.6 and 1508.5.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

July 28, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR. *GTF*
Acting Chair

SUBJECT: ATTACHED MEMORANDUM

Attached please find a memorandum regarding the designation of non-federal agencies to be cooperating agencies in implementing the procedural requirements of the National Environmental Policy Act. If you have any questions concerning this memorandum, please do not hesitate to contact Dinah Bear, the Council on Environmental Quality's General Counsel, at (202) 395-5750.

Attachment



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July 28, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR. *GTFjr*
Acting Chair

SUBJECT: DESIGNATION OF NON-FEDERAL AGENCIES TO BE COOPERATING
AGENCIES IN IMPLEMENTING THE PROCEDURAL REQUIREMENTS OF
THE NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of this Memorandum is to urge agencies to more actively solicit in the future the participation of state, tribal and local governments as "cooperating agencies" in implementing the environmental impact statement process under the National Environmental Policy Act (NEPA). 40 C.F.R. §1508.5. As soon as practicable, but no later than the scoping process, federal agency officials should identify state, tribal and local government agencies which have jurisdiction by law and or special expertise with respect to reasonable alternatives or significant environmental, social or economic impacts association with a proposed action that requires the preparation of an environmental impact statement¹. The federal agency should then determine whether such non-federal agencies are interested in assuming the responsibilities of becoming a cooperating agency under 40 C.F.R. §1501.6. Where invited tribal, state, or local agencies choose not to become cooperators in the NEPA process, they may still be identified as an internal party on the distribution list, if they so desire.

¹ While CEQ has not attempted to identify every state, tribal and local government agencies with jurisdiction by law or special expertise (nor do we propose to do so), agencies may wish to refer to Appendix II to the CEQ regulations, "Federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues", Vol. 49 *Federal Register*, No. 247, 49754-49778 (December 21, 1984), for guidance as to the types of actions and expertise that are relevant in determining appropriate cooperating agencies. Please contact CEQ for copies, if needed.

The benefits of granting cooperating agency status include disclosure of relevant information early in the analytical process, receipt of technical expertise and staff support, avoidance of duplication with state, tribal and local procedures, and establishment of a mechanism for addressing intergovernmental issues. If a non-federal agency agrees to become a cooperating agency, agencies are encouraged to document (e.g., in a memorandum of agreement) their specific expectations, roles and responsibilities, including such issues as preparation of analysis, schedules, availability of pre-decisional information and other issues. Cooperating agencies are normally expected to use their own funds for routine activities, but to the extent available funds permit, the lead agency should fund or include in its budget requests funding for major activities or analyses that it requests from cooperating agencies. 40 C.F.R. §1501.6(b)(5).

Agencies are reminded that cooperating agency status neither enlarges nor diminishes the decisionmaking authority of either federal or non-federal entities. However, cooperating agency relationships with state, tribal and local agencies help to achieve the direction set forth in NEPA to work with other levels of government "to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." Considering NEPA's mandate and the authority granted in federal regulation to allow for cooperating agency status for state, tribal and local agencies, cooperator status for appropriate non-federal agencies should be routinely solicited.